

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of the Appeal
of:

P.S. DEVELOPMENT CORP.
dba Comet Electric
7760 Deering Ave.
Conoga Park, CA 91304

Employer

DOCKET(S) 96-R4D1-207

DECISION

Background and Jurisdictional Information

On July 19, 1995, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Shlomo Goldberg, started an inspection at a new school being constructed at 220 S. Hobart Street, Los Angeles, California (the site). Employer, the electrical subcontractor for the project, was one of several employers who had employees working at the site that day and were inspected by Mr. Goldberg. On January 12, 1996, the Division issued Employer Citation 1 alleging a general violation of § 1509(a)¹ [Injury and Illness Prevention Program (IIPP)] and proposed a \$135 civil penalty.

Employer filed a timely appeal contesting the existence of the alleged violation and the reasonableness of the proposed civil penalty.

On March 18, 1997, at 9 a.m. in Los Angeles, California, Dennis M. Sullivan, Administrative Law Judge for the California Occupational Safety and Health Appeals Board, conducted a hearing of Employer's appeal. Adam Saitman, a corporate officer, represented Employer. Ray Barkley, Acting District Manager, represented the Division. Oral and documentary evidence was presented by the parties and the matter was submitted on March 18, 1997.

¹ Unless otherwise specified, all references are to Sections of Title 8, California Code of Regulations.

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Citation 1
General
§ 1509(a)

Summary of Evidence

The citation was issued because Employer's written Code of Safe Practices (code) inadequately addressed electrical safety and because Employer failed to make records of safety inspections available to the Division. Mr. Goldberg explained that each of these instances could have been cited as a separate violation under related safety order provisions, but the Division combined them and alleged a single violation to be equitable to Employer.

During his walk-around inspection of the site on July 19, 1995, with a representative of the general contractor, Mr. Goldberg was referred to Pete Knapton, Employer's foreman.

Mr. Knapton made Employer's code available to Mr. Goldberg who reviewed the document and found that it included no safe practices regarding two vital concerns of electrical safety at construction projects; the use of ground fault circuit interrupters and a program for assuring that electrical tools are grounded.

On July 19, 1995, Mr. Goldberg faxed to Employer a request for copies of records of safety inspections Employer had performed at the site and other documents. (Division Exhibit 2)

In response, Employer sent Mr. Goldberg the other documents he had requested, but no safety inspection records.

On January 11, 1996, Mr. Goldberg conducted a telephonic closing conference with Adam Saitman and informed him that the citation and proposed civil penalty would be issued, in part, because Employer had not produced the safety inspection records.

Shortly thereafter, Mr. Goldberg received a copy of Employer's revised code. He examined it and found that Employer had abated the electrical safety deficiencies. He never received the safety inspection records.

Based on his inspection, the Division issued Citation 1 alleging a general violation of § 1509(a).

Using the proposed penalty worksheet (Division Exhibit 4) as a guide, Mr. Goldberg explained that the \$135 proposed civil penalty had been calculated in accordance with the Director's penalty setting regulations.

Adam Saitman testified that Employer was a business started by his mother and father many years before the inspection. By the time the inspection was conducted, Adam Saitman had succeeded his father Joel as the principal executive of the company. Hence, he was Employer's representative during the inspection and appeal.

Mr. Saitman recalled seeing Mr. Goldberg's faxed request for information, including safety inspection records, soon after it was received on July 19, 1995. He believed Employer had all of the requested information available, and asked the office manager to assemble the information and send it to Mr. Goldberg. He assumed the office manager had fully complied with Mr. Goldberg's request and was unaware the safety inspection records had not been included until Mr. Goldberg so informed him during the January 11, 1996 closing conference.

When Employer sent Mr. Goldberg a copy of the revised code after the closing conference, it was Mr. Saitman's intent that the safety inspection records be sent with the Code but, for some reason, that was not done.

Mr. Saitman testified that, during a telephonic prehearing conference conducted by another Appeals Board ALJ on September 30, 1996, he asked Mr. Goldberg if the Division would still be willing to consider copies of the safety inspection records, which Employer had maintained, as a basis for reevaluating the citation. As Mr. Saitman recalled, Mr. Goldberg replied, in effect, that such action would be untimely. Therefore, Mr. Saitman did not send the records.

According to Mr. Saitman, Employer conducted a safety inspection at every construction sites where it was the electrical subcontractor, during each week it had employees working at the site. To his knowledge, foreman Pete Knapton who was responsible for the safety of Employer's employees at the site, had followed that practice.

He identified Employer Exhibit A as copies of three "safety inspection report[s]" prepared by Pete Knapton for safety inspections he conducted at the site on June 5, June 19, and July 10, 1995. The date (07-21-95) and time (13:07-10) stamps and the name "S. J. Amoroso Co." at the top of each page of the safety inspection reports indicated that copies were faxed to the general contractor on July 21, 1995. A field superintendent visited the site each week. The foreman was suppose to give copies of the inspection reports to the field superintendent so he could return them to Employer's office for filing, but that did not always happen.

In Mr. Saitman's view, Employer's safety program and procedures adequately covered the issues raised by the Division. If the foreman had found electrical connections and cords or power operated tools to be in such a condition that they exposed employees to the hazard of contact with electrical current the foreman would have checked the "no" box following the question, "are electrical wiring connections, boxes & controls in good condition?", or the question, "are hand tools properly maintained & in good condition?". The foreman also would have explained in detail each problem detected in the blank spaces following the applicable questions.

Mr. Saitman added that Employer did not supply the temporary power for the construction work being done at the school. The power was provided by the general contractor and employer simply plugged its cords, tools and equipment into the receptacles of a multi-receptacle device known as a "spider box", provided by the general contractor.

Ground fault circuit interrupters were built into the general contractor's spider box. Since the general contractor was responsible for providing the temporary power and owned the spider box, Employer did not test the box and relied on the general contractor to ensure that the interrupters were working properly

Mr. Saitman did not question the accuracy of the Division's penalty calculation. However, because he doubted that Employer had violated the safety order and Employer had, nevertheless, cooperated with the Division by amending its code, he felt the Division should not have proposed a penalty.

Mr. Goldberg said it was dangerous not to check the ground fault circuit interrupters. He and other division inspectors often found the interrupters in the temporary power supply system at a construction site to be defective, inadequate or inoperable for a variety of reasons.

Findings and Reasons for Decision

EMPLOYER FAILED TO ADDRESS ESSENTIAL RULES OF ELECTRICAL WORKER SAFETY WITH SUFFICIENT SPECIFICITY IN ITS CODE OF SAFE PRACTICES AND DID NOT MAKE SAFETY INSPECTION RECORDS AVAILABLE TO THE DIVISION WITHIN A REASONABLE TIME AFTER THE RECORDS WERE REQUESTED. THESE OMISSIONS SHOW THAT EMPLOYER'S IIPP IMPLEMENTATION WAS DEFICIENT AT THE TIME OF THE INSPECTION. THE EMPLOYEES AT THE SITE WERE EXPOSED TO

THE VIOLATIVE CONDITION. A VIOLATION OF SECTION 1509(a) WAS ESTABLISHED.

THE \$135 PROPOSED CIVIL PENALTY IS REASONABLE.

By § 1509(a), Employer was obligated to “implement and maintain an effective” IIPP for its employees working at the site.

A Code of Safe Practices is a means by which an employer communicates with and instructs employees regarding safety and the code must relate “to the employer’s operations.” (§ 1509(b))

Safety Engineer Goldberg testified that on the date of the inspection Employer’s code did not include safe practices relating to the use of ground fault circuit interrupters and assuring that electrical tools are grounded. Employer did not refute his testimony. His testimony is credited and found to be some evidence that the implementation of Employer’s IIPP was deficient.

§ 1509(a) makes the General Industry Safety Order IIPP requirements of § 3203 applicable to construction employers. § 3203(a)(4) requires an employer to conduct periodic site safety inspections and § 3203(b)(1) requires the employer to keep written records of the inspections.

Mr. Saitman delegated responsibility for sending the inspection records to the Division to a competent subordinate employee on two separate occasions and was a loss to explain why the records had not been sent.

The safety inspection reports (Employer Exhibit A) introduced by Employer appear to be valid records of three safety inspections conducted by the foreman in June and July of 1995. They are accepted as proof that Employer did conduct and record the three inspections.

However, the Division first requested the records on July 19, 1995, when the inspection began, and Employer did not comply with the request before the inspection was closed on January 11, 1996, nearly six months later. Moreover, Mr. Saitman testified that Employer intended to send the inspection records to the Division in response to the July, 1995, request and again in January, 1996, when he learned the Division had not received the records in July. Employer’s inability to produce records required to be maintained by safety order, after two attempts and the passage of half a year, proves that Employer’s maintenance of the records was deficient.

Together, the Code omissions and maintenance of safety records deficiency prove that Employer was not adequately implementing its IIPP at

the site at the time of the inspection. The employees working at the site were exposed to the violation. Accordingly, a general violation of § 1509(a) is found to exist.

The safety engineer's testimony and the proposed penalty worksheet (Division Exhibit 4) demonstrate that the Division calculated the penalty in accordance with the Director's regulations and granted Employer the maximum allowable deductions, adjustments and credits. Accordingly, the \$135 proposed civil penalty is found to be reasonable.

Decision

The appeal is denied. The citation and civil penalty are affirmed, as set forth in the attached Summary Table.

Dated: April, 1997

DENNIS M. SULLIVAN
Administrative Law Judge

DMS:cdh